

## AMENDMENT

### IN THE CLAIMS

Please **cancel** Claims 1 - 46 from this application.

### REMARKS

In response to the Notice to File Missing Parts of Nonprovisional Application Filed Under 37 CFR 1.53(b) mailed on **August 1, 2001**, Applicant submits this Preliminary Amendment to clarify and correct any errors made by Applicant or the Patent Office in construing the number of claims to be examined in this divisional application.

### TOTAL NUMBER OF CLAIMS

The copy of the entire original specification of the parent patent application was filed with the initial Preliminary Amendment outlining the new claims (total of one claim) for this new divisional application. That original specification contained 46 original claims. None of these 46 original claims was meant to be filed and subsequently examined. Therefore, Applicant hereby cancels all 46 of the original claim filed with the copy of the original specification, leaving only one claim, namely, claim 42, to be examined herein. Applicant regrets any confusion caused by this submission of the original specification.

After speaking with Mr. Fred Silverberg, USPTO Senior Legal Advisor (703-305-8986 and Fred.Silverberg@uspto.gov), on September 26, 2001, Applicant was informed that another Preliminary Amendment could be filed, along with this response to the Notice of Missing Parts to correct this error. Mr. Silverberg also pointed out that the entire filing fee for the claims need not be submitted, but that the surcharge (\$65.00) and the Preliminary Amendment clarifying the total claims to be examined, would be a sufficient reply.

Mr. Silverberg is an expert in this area of patent law, and Applicant is following his direction in filing this Preliminary Amendment along with this reply to the Notice of Missing Parts. He pointed to MPEP 607 which states "an amendment cancelling claims ...will be effective to diminish the number of claims to be considered in calculating the filing fees to be paid." MPEP 607, page 600-49. This amendment reduces the total number of claims to one.

**A SUFFICIENT FILING FEE HAS ALREADY BEEN SUBMITTED**

This divisional application was filed with a filing fee of \$355.00. This fee would cover the claims now on record, namely, claim 42, one independent claim, and one claim total.

Therefore, the amount of \$708.00, as requested in the Missing Parts Notice, due to the count of claims including the number of claims (46) in the original specification, is not included herein, but the surcharge of \$65.00 is submitted. Entry of this Preliminary Amendment is respectfully requested. Cancellation of the original 46 claims is respectfully requested. Many of those claims have already been allowed and make up the subject matter of two prior issued patents. They cannot be prosecuted again, and it was not Applicant's intent that they be specifically included in this divisional application as claims to be prosecuted.

**PRIOR OATH OR DECLARATION SUBMITTED HEREWITH**

In the Notice to File Missing Parts it is noted that an Oath or Declaration was missing from the divisional application as filed. This was an oversight by the Applicant, and the original Oath and Declaration from the parent patent application is hereby submitted to correct this deficiency.

Mr. Stephen G Kunin of the Office of Patent Legal Administration, has written a very informative article for the USPTO web site entitled "File Continuation or Divisional Application with a New Specification and Copy of Oath or Declaration from Prior Application." The date that this article was published on the USPTO web site was September 12, 2001. This article specifically states that a divisional application under 1.53(b) may be filed with a new specification and corrected drawings, along with a copy of an Oath or declaration from a prior (parent) application.

Applicant has read and understands this article, and this is why the prior patent application Oath is being submitted, rather than a new Oath or Declaration. If the IPE insists, a new Oath or declaration can be executed and sent. Applicant respectfully requests that this copy of the original Oath or declaration be accepted and entered into the file. Applicant checked the box indicating a copy of the prior Oath would be submitted and did fill out Box 18 on Form PTO/SB/05. Applicant regrets not having submitted this copy of the Oath with the initial papers.

Applicant would like to again inform the assigned Examiner that one of the inventors signing the Oath in the original parent application, namely, Denise Jeffreys, is to be deleted from

the named inventors in this divisional application. To this end, Applicant did submit the inventors Declaration, specifically stating that Ms. Jeffreys be deleted. Therefore, this divisional is to have only two named inventors, Robert J. Mos and Clay von Mueller. Applicant respectfully requests such action be accepted and entered into the record file. This is not a correction of inventorship, as the prior CPA, now Pat. No. 6,260,146, which is the direct parent to this divisional correctly does not name Ms. Jeffreys as an inventor also.

### Conclusion

Therefore, Applicant respectfully requests that the total number of claims be corrected to reflect one claim in this pending divisional application, that the original filing fee submitted be deemed sufficient, and that the enclosed Oath from a prior Parent patent application be accepted as the Oath in this divisional application with the deletion of Denise Jeffreys as a named inventor as per the Declaration Regarding inventorship filed in the parent application (a copy of which was originally filed with the divisional papers).

If it is felt for any reason that direct communication with Applicant's attorney would serve to advance prosecution of this application, the Primary Examiner is invited to call, fax or e-mail the undersigned, attorney of record in this case, Richard D. Clarke, Esq., at one of the below-listed numbers or his e-mail address.

Dated: September 29, 2001

Respectfully submitted,  
THE LAW OFFICE OF RICHARD D. CLARKE

By   
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